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10/716,916	11/18/2003	Greg Christopher JR.	07844-602001-P555	6410
21876 7590 09/16/2008 FISH & RICHARDSON P.C. P.O. Box 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
CHEN, QING				
ART UNIT		PAPER NUMBER		
2191				
NOTIFICATION DATE		DELIVERY MODE		
09/16/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/716,916

**Applicant(s)**

CHRISTOPHER, GREG

**Examiner**

Qing Chen

**Art Unit**

2191

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 18 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,5-10,12,14-23,25,26 and 28-32  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Wei Y Zhen/  
Supervisory Patent Examiner, Art Unit 2191

Continuation of 11, does NOT place the application in condition for allowance because:

Regarding the Applicant's arguments on page 11 to page 14 of the "Remarks" pertaining to the rejections of the claims made under 35 U.S.C. § 103(a), the Applicant asserts that none of the attributes as disclosed in Kruger can be considered as a "dynamic attribute," as required by Claim 1. Applicant also asserts that Kruger discloses the process of determining differences that result from a single installation of software to a single master computer and thus, Kruger does not teach or suggest the particular claim limitation of "identifying from the installation data the dynamic attribute that was not changed in the current software installation." Applicant also asserts that Kruger teaches a process of determining how a master computer has changed during an installation of software, so that this change information can be stored in a manifest for use in installing the same software to different computers and thus, Kruger does not teach or suggest the various limitations as recited in Claim 1—namely, limitations pertaining to installing software on the same computer. Applicant also asserts that Breggin does not address software product development, but rather software installation development. Applicant also asserts that the Office fails to specifically address the Applicant's argument regarding Breggin's exception relating to a difference, not the absence of an expected difference. Applicant's arguments are fully considered, but found to be not persuasive for at least the following reasons:

First, with respect to the Applicant's assertion that none of the attributes as disclosed in Kruger can be considered as a "dynamic attribute," as required by Claim 1, as previously pointed out in the Final Rejection (mailed on 06/16/2008) and further clarified herein, the Examiner respectfully submits that Kruger clearly discloses a dynamic attribute (see Column 1: 40-45, "In addition to installing new files, the installer may alter certain existing files such as the Windows Registry in a computer system running the conventional Windows 95 operating system commercially available from Microsoft Corporation of Redmond, Wash.," Column 5: 18-29, "In both of the preceding embodiments, leaf nodes of the subtree or subtrees correspond to files, and contain information about the files in place of the files themselves. In one embodiment, such information is referred to as the node's properties and contains some or all of the file details ... These details may include the filename, last modification date, size, access permissions such as read only, and security information describing who is allowed access to the file and the type of access allowed.," Column 6: 51-58, "Registry file state retriever 225 reads the operating system registry file, such as the windows registry file in Microsoft Windows 95, and builds a subtree corresponding to the hierarchy of the registry file. For example, the Windows registry file arranges the keys and values in a hierarchical folder system and this hierarchy is used to build the subtree. Leaf nodes hold the values in the node's properties, and parents of these nodes store the keys in their properties."). A "dynamic attribute," as defined in the claims, is an attribute that should have changed between the previous software installation and the current software installation. As acknowledged by the Applicant on page 11 of the "Remarks," Kruger discloses the process of recording the "before" state of the master computer before an installation has occurred. The recorded "before" state of the master computer is represented in a tree structure and includes all of the files in the master computer's file storage (hard drives). The leaf nodes of the tree contain information about the files, which includes the last modification date. After the software is installed onto the master computer, Kruger further discloses the process of recording the "after" state of the master computer after the installation has occurred. Again, the recorded "after" state of the master computer is represented in another tree structure and includes all of the files in the master computer's file storage. A difference calculator is then utilized to compare the "before" tree and "after" tree to determine what changes have taken place in the master computer. One of ordinary skill in the art would readily recognize that when the difference calculator detects a change in a file (i.e., modification), the last modification date of the file should be changed to reflect the new date of the change. Examiner further submits that Kruger also discloses the process of building a subtree corresponding to the hierarchy of the operating system registry file, such as the Windows® registry file, for the recorded "before" and "after" states of the master computer. As the Applicant is likely aware, the Windows® registry is a directory used to store information that is necessary to configure the operating system for one or more users, applications, and hardware devices. Thus, one of ordinary skill in the art would also readily recognize that whenever a software is installed, the registry information for the software should be changed and reflected in the registry. In addition, the Examiner further submits that the Applicant intends on limiting the scope of the limitation "dynamic attribute" to include modification date stamp information as recited in dependent Claim 8 and limiting the scope of the limitation "resource" to include a file and system registry as recited in dependent Claim 9.

Second, without acquiesce to the Applicant's assertion that Kruger discloses the process of determining differences that result from a single installation of software to a single master computer, the Examiner first submits that the claim language does not define any specific relationship between the current software installation and the previous software installation. Nor does the claim language offer any clarification on whether the current software installation and the previous software installation are related to the same software program. The claims merely recite a current software installation and a previous software installation without any further clarification on how the current software installation relates to the previous software installation. Furthermore, as previously pointed out in the Final Rejection (mailed on 06/16/2008) and further clarified herein, the Examiner respectfully submits that Kruger clearly discloses a current software installation to a target computer and a previous software installation to the same target computer in a series of two software installations as required by Claim 1. Applicant acknowledges that Kruger discloses a current software installation to a target computer on pages 11 and 12 of the "Remarks." Examiner would like to point out that Kruger's invention is related to software installation and more specifically, to a method and apparatus that identifies changes made to a computer system (i.e., the master computer) caused by the installation of software. One of ordinary skill in the art would readily comprehend that various other software installations must have occurred in the master computer prior to the recording of the "before" state of the master computer. Note that the recorded "before" and "after" states of the master computer include all of the files in the master computer's file storage. Thus, the "before" state of the master computer includes the files from the previous software installations.

Third, with respect to the Applicant's assertion that Kruger does not teach or suggest the particular claim limitation of "identifying from the installation data the dynamic attribute that was not changed in the current software installation," as previously pointed out in the Final Rejection (mailed on 06/16/2008) and further clarified herein, the Examiner respectfully submits that Kruger clearly discloses "identifying from the installation data the dynamic attribute that was not changed in the current software installation" (see Column 8: 34-40, "When

difference calculator 234 compares a terminal node, the properties of the node are also compared, and if the properties of each corresponding node are the same, difference calculator 234 marks the terminal node in the tree it creates as the "same". This means the state represented by the terminal node did not change when the new software was installed."). Note that, as stated hereinabove, a node contains information about a file such as the last modification date. When the difference calculator compares the node information between the nodes and determines that the information (e.g., the last modification date) did not change, it marks the node as "same." This means that the node did not change in the current software installation.

Fourth, with respect to the Applicant's assertion that Kruger teaches a process of determining how a master computer has changed during an installation of software, so that this change information can be stored in a manifest for use in installing the same software to different computers and thus, Kruger does not teach or suggest the various limitations as recited in Claim 1—namely, limitations pertaining to installing software on the same computer, the Examiner has addressed the Applicant's arguments regarding a current software installation to a target computer and a previous software installation to the same target computer hereinabove.

Fifth, without acquiesce to the Applicant's assertion that Breggin does not address software product development, but rather software installation development, the Examiner first submits that the claim language does not require any limitation relating to what type of software program is produced by the software product development. The claims only require a software product development and thus, the claims are only limited to the scope of such. In accordance with MPEP § 2111, during patent examination, the claims must be given the broadest reasonable treatment and interpreted as broadly as their terms reasonably allow. Furthermore, as previously pointed out in the Final Rejection (mailed on 06/16/2008) and further clarified herein, the Examiner respectfully submits that Breggin clearly discloses a software product development (see Column 3: 66 and 67 to Column 4: 1-6, "... the install program is created by a builder or installer on a computer that is hereinafter referred to as the build computer. The builder or installer writes a program or script describing how the software and supporting files are to be installed on a target computer."). Note that, as disclosed exactly, the install program is created by a builder or installer on a computer (software product development). Thus, the install program is clearly a software product that is developed by a build computer. Examiner further submits that the limitation of a "software product development" is referring to the general fundamentals of software engineering and its concepts are well-known to one of ordinary skill in the art. Breggin is relied upon by the Examiner to show that software product development is well-known to one of ordinary skill in the art.

Sixth, with respect to the Applicant's assertion that the Office fails to specifically address the Applicant's argument regarding Breggin's exception relating to a difference, not the absence of an expected difference, as previously pointed out in the Non-Final Rejection (mailed on 11/28/2007) and the Final Rejection (mailed on 06/16/2008) and further clarified herein, the Examiner first submits that Breggin is NOT relied upon by the Examiner for teaching the limitation of a "dynamic attribute." Rather, Breggin is relied upon by the Examiner for its specific teaching of presenting potential problems with the current installation. Kruger clearly discloses a "dynamic attribute" as discussed hereinabove and thus, Applicant's argument regarding Breggin's exception relating to a difference, not the absence of an expected difference is, at best, moot. Examiner further submits that presenting problems with a software installation to a user is well-known to one of ordinary skill in the art and also conventional in the area of software installation. By way of an example and not of limitation, GUI tools are commonly used in the area of software installation to display software installation problems to a user. Thus, in view of the teaching of Breggin and the state of the art, one of ordinary skill in the art would be motivated to modifying the teaching of Kruger to include presenting potential problems with the current software installation based on the identified dynamic attribute in order to provide a user with useful diagnostic information during software installation.

Seventh, the Examiner would like to further point out that Kruger is within the field of the Applicant's endeavor and hence is analogous prior art because Kruger is directed to a method and apparatus that identifies changes made to a computer system caused by the installation of software. Breggin is also within the field of the Applicant's endeavor and hence is analogous prior art because Breggin is directed to a method and system for diagnosing problems caused by software installation. Therefore, it is permissible to combine the teaching of Breggin into the teaching of Kruger to include the limitations disclosed by Breggin since knowledge generally available to one of ordinary skill in the art provides a reason for combining the elements in the manner claimed. See MPEP § 2141.01(a).

Therefore, for at least the reasons set forth above, the rejections made under 35 U.S.C. § 103(a) with respect to Claims 1, 10, 19, and 25 are proper and therefore, maintained.